Calendar No. 2618

81ST CONGRESS, 2d Session | SENATE | REPORT No. 2618

PROVIDING FOR THE REVIEW OF ORDERS OF THE FEDERAL COMMUNICATIONS COMMISSION, OF CERTAIN ORDERS OF THE SECRETARY OF AGRICULTURE MADE UNDER THE PACKERS AND STOCKYARDS ACT, AND THE PERISHABLE AGRICULTURAL COMMODITIES ACT, AND OF CERTAIN ORDERS OF THE UNITED STATES MARITIME COMMISSION

DECEMBER 11 (legislative day, NOVEMBER 27), 1950.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5487]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5487) to provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, having considered the same, report favorably thereon, with amendments, and recommend that the bill, as amended, do pass.

AMENDMENTS

(1) On page 2, line 12, following the word "Board" insert ", or the Maritime Administration,".

(2) On page 2, line 13, following the word "Commission" strike the words "or Board" and insert in lieu thereof ", Board, or Administration".

(3) On page 3, line 3, following the word "Board", insert "or the Maritime Administration".

(4) On page 11, line 10, following the word "Agriculture" insert "or the United States Maritime Commission, the Federal Maritime Board and the Maritime Administration".

(5) Following the word "Board" in the seventh line of the title, amend the title by inserting "or the Maritime Administration".

The purpose of these amendments is to bring the language of the bill into conformity with the changes made by Reorganization Plan No. 21, 1950.

(6) On page 6, line 21, strike all of subsection (d), including the title of that subsection.

The purpose of this amendment is to eliminate the scope of review subsection which, in the committee's opinion, is in conflict with the Administrative Procedures Act.

PURPOSES

The purposes of the proposed legislation are:

(1) To facilitate the work of the Federal courts by substituting a direct appeal to the circuit court of appeals for a trial de novo before a three-man judge district court in the review of the orders of certain Government agencies, and

(2) to replace the right of appeal from a three-man judge court to the Supreme Court with a relegation to the writ of certiorari from the decision of the court of appeals.

STATEMENT

I. HISTORY OF LEGISLATION

This bill has its origin in a request made by the late Chief Justice Stone that the Judicial Conference of the United States make a study of the procedure for the review of those administrative agency orders which were at that time subject to the procedural requirements of the Urgent Deficiency Act of 1913 with a view to recommending the enactment of legislation that would eliminate the difficulties that had developed in following that procedure. The provisions of the Urgent Deficiencies Act for review of certain agency orders by special district courts of three judges, with an appeal as of right directly to the Supreme Court, had often not only disrupted the ordinary conduct of litigation by the district courts, by requiring the services of three judges in these cases, when in ordinary litigations only one judge is needed; but, also, as Chief Justice Stone pointed out, it had forced the Supreme Court to review many cases where the questions involved were of only minor importance, but where lengthy records and extreme technicalities had added heavily to the burden of the Court. The Chief Justice suggested that the Supreme Court should be relieved of this unnecessary burden. Accordingly, in 1942, the Judicial Conference established a committee to consider the problem. This committee made a preliminary report to the Judicial Conference in 1943. At that time the committee was enlarged by consolidation with another committee on three-judge-court procedure. The consolidated committee consisted of the following members:

Chief Judge Orie L. Phillips of the Court of Appeals for the Tenth Circuit of Denver, Colo. (chairman)
Circuit Judge Armistead M. Dobie, of Virginia
Circuit Judge Evan A. Evans, of Wisconsin (now deceased)
Circuit Judge Learned Hand of New York
Circuit Judge Calvert Magruder of Massachusetts
Circuit Judge Albert B. Maris of Philadelphia
Circuit Judge Kimbrough Stone of Missouri
District Judge (now Circuit Judge) Walter C. Lindley of Illinois
Commissioner Clyde B. Aitchison of the Interstate Commerce Commission

For the next 3 years the committee worked steadily on the problem. It sat and collaborated with representatives of the agencies concerned: the Solicitor of the Department of Agriculture, the General Counsel of the Federal Communications Commission, attorneys for the United States Maritime Commission, and the Solicitor General of the United States. It prepared and discussed drafts of bills, and revised them to meet suggestions coming from many sources, including the administrative agencies and practitioners before them. It prepared successive reports with proposals of bills, which in turn were discussed by the Judicial Conference at its annual meetings in 1944, 1945, and 1946.

Finally, in 1946, the Judical Conference recommended that specified legislation along the lines of its committees' recommendations should be enacted by the Congress. These legislative proposals were introduced as House bills in the Eightieth Congress. They were extensively discussed at hearings before the House Judiciary Committee in that Congress, and favorably reported, with amendments. In the Eighty-first Congress the unenacted parts of the legislation were reintroduced and made the subject of further extensive hearings and deliberations in the Judicial Conference and the agencies concerned, as well as by the Judiciary Committees of the House and the Senate. The present bill, with the amendments proposed by the committee, is a carefully considered result of all this study. It is approved by the judiciary, by the agencies concerned, by the Attorney General, and by practitioners and others interested. It is the view of the committee that with this background the legislation is the best solution possible to a most technical and troublesome problem in administrative and judicial procedure.

II. PRESENT LAW

At present the method of review of most of judicially reviewable orders of the agencies involved in the proposed bill is prescribed by many provisions scattered throughout different statutes. These provisions have a common feature, that the controversy over the agency order is heard and decided de novo in a district court. When an agency order is challenged by an aggrieved party as illegal, the present law, in many cases, requires that the controversy shall be heard in a district court by a panel of three judges, one of whom at least shall be a circuit judge and the others of whom may be district judges. The pattern for this was established by the Urgent Deficiencies Act of 1913, and is continued by the present law (28 U. S. C. 2284). In cases under this provision and others adopting the procedure, in which the trial in the district court is by three judges sitting en banc, there is a right of review by appeal to the Supreme Court of the United States.

III. ANALYSIS OF BILL

A. Jurisdiction.

The proposed bill confers jurisdiction upon the circuit courts of appeal to review the orders of the agencies named. Jurisdiction is invoked by the filing of a petition for review by an aggrieved party which sets forth (*a*) the nature of the proceedings as to which review is sought, (*b*) the facts upon which venue is based, (*c*) the grounds on

which relief is sought, and (*d*) the relief prayed. The action is brought against the United States as the primary party, but the agency concerned and any party in interest in the proceedings before the agency may appear as parties to the action as of right. Provision is also made for the intervention of those whose interests are affected by the agency's order.

B. Venue

Venue under this bill may be in any one of three places, the residence of the party filing the petition for review, the place where such party has its principal office and the United States Court of Appeals for the District of Columbia.

C. Scope of review

Review by the circuit court of appeals is limited to the record made before the agencies with certain exceptions. First of all, if a party establishes to the circuit court of appeals that he can produce additional evidence and that he had reasonable grounds for not presenting that evidence before the agency, he may have the proceedings referred to the agency for the purpose of adducing such additional evidence. Secondly, if no hearing were required before the agency and none were held, but a genuine issue of material fact is presented to the court of appeals, that court may transfer the proceedings to a district court for the purpose of holding a hearing and making a determination of fact. Thirdly, if no hearing were required before the agency and none were held, the court may consider the controversy on the pleadings and affidavits filed by the parties if no genuine issue of material fact is presented.

The scope of the review of these Agency orders by the Circuit Court of Appeals is governed by section 10 (e) of the Administrative Procedures Act.

Review of the action taken on appeal by the Circuit Court of Appeals is limited to the writ of certiorari.

IV. CONCLUSION

The pattern used here is the one established for review of orders of the Federal Trade Commission in 1914 (15 U. S. C. 45c) and followed by other laws since then in relation to many other agencies, including the Securities and Exchange Commission, the Bituminous Coal Commission, and the National Labor Relations Board.

The proposed method of review has important advantages in simplicity and expedition over the present method. First, the submission of the cases upon the records made before the administrative agencies will avoid the making of two records, one before the agency and one before the court, and thus going over the same ground twice. Under the Administrative Procedure Act of June 11, 1946, the record before the agencies will be made in such a way that all questions for the determination of the courts on review, and the facts bearing upon them, will be presented and the rights of the parties will be fully protected. The bill has adequate provisions in section 7 (b) and (c) for the taking of evidence either by the agency or in the district court, when for one reason or another that is necessary because a suitable hearing was not held prior to initiation of the proceeding in the court of appeals.

Second, in many cases in which hearing in the district courts by panels of three judges is now required there will be a large saving of judicial time and energy. It is generally recognized that three-judge courts are not well adapted for conducting hearings. The necessity of holding conferences whenever questions arise in the course of the proceedings, as they repeatedly do in relation to such matters as the admissibility of evidence, very much slows the trial. In addition the proceeding takes the time of three judges, whereas one would be sufficient at this preliminary stage of the case. The method of review prescribed by the proposed bill would secure the collaboration of three judges at the stage where it is useful, namely, in the decision without consuming their time unnecessarily in the preceding phases of the case.

Third, the provision for review of the Supreme Court in its discretion upon certiorari, as in the review of other cases from circuit courts of appeals, will save the members of the Supreme Court from wasting their energies on cases which are not important enough to call for their attention, and enable them to concentrate more fully upon cases which require their careful consideration. By allowing certiorari, the Court will still reserve for consideration those cases in relation to administrative agencies where significant constitutional issues or substantial public interests are involved, but it will not any longer be required automatically to hear cases which are not of a nature to merit its consideration.

The mode of judicial review provided in this bill has been evolved from long study and careful consideration by all persons concerned with the difficult questions involved. It represents an important improvement in judicial procedure—one that will make for economy and expedition in the disposition of a considerable class of business of the Federal courts.

Pursuant to the finding required by rule XXIX (4) of the Standing Rules of the Senate, it is the opinion of the Committee on the Judiciary that it is necessary to dispense with the requirements of that rule in order to expedite the business of the Senate.

○